
(1995) 10 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5682 of 1992

VST Industries Canteen Workers" Union

APPELLANT

Vs

Vazir Sultan Tobacco Co. Ltd. and Others

RESPONDENT

Date of Decision : 30-10-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Factories Act, 1948 — Section 46

Citation : (1995) 3 ALT 644 : (1998) 3 LLJ 450

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : S. Subramanyam and S. Ashok Anand Kumar, for the Appellant; K. Srinivasa Murthy, for the Respondent

Final Decision : Allowed

Judgement

Motilal B. Naik, J.—This writ petition is filed by the VST Industries Canteen Workers" Union represented by its Secretary P. Navaneetham seeking a mandamus directing the first respondent to treat the members of the petitioner-Union who are the employees of the Canteen, established u/s 46 of the Factories Act by the first respondent, as the employees of the first respondent-Company and seeks a consequential direction to tender all monetary and other benefits accrued and acquired by treating them as employees of the first respondent.

2. The claim of the petitioner is that it is a union registered under Trade Unions Act vide Regd. No. B. 1421 and by their resolution dated April 19, 1992 authorised the Secretary Sri P. Navaneetham to file the present writ petition seeking a direction to direct the respondents to treat the canteen workers and the members of the petitioners-Union numbering 65 (the said list is described in Annexure-I of the material papers) as the employees of the first respondent-Company.

3. It is stated that VST Company Limited, the first respondent herein, is a

company engaged in the activity of manufacturing cigarettes since 1937 and is associated with ITC Limited. The respondent-Company employs nearly 2050 persons for the said activity of manufacturing cigarettes excluding the canteen staff. Section 46 of the Factories Act, a statutory requirement is to establish and maintain a canteen in the Factory premises for its employees. In fulfilment of the requirement contemplated under said Section 46 of the Factories Act, the First respondent has also established a canteen and is maintaining it within the factory premises. The first respondent had been managing the canteen upto the year 1982. After 1982, the first respondent-Company introduced the contract system for maintaining the canteen so established.

4. Presently, the canteen is run by the Blue Star Enterprises. It is stated that though the management of the canteen has been entrusted to the contractors from time to time, the personnel working in the canteen are retained by all these contractors and they have been paid the salaries through the Contractors. It is stated that the members of the petitioner-Union have been continued though the management of the canteen is entrusted to private contractors. They have been tendered ESI benefits under the code number of VST and they have also been given EPF benefits under the Employees' Provident Funds Act under code number of VST. It is further stated that the contractors have not issued any appointment orders to the members of the petitioner-Union. The members of the petitioner-Union have also been issued identity cards by the Welfare Officer of VST which is renewable from year to year.

5. It is stated that the workmen employed by the first respondent for maintaining the canteen from 1937 till 1982 are adjusted in various departments by the first respondent. The respondent has five other associate units. In those units also, canteen is established and maintained by regular staff and they are all given all benefits excepting the members of the petitioner-Union working in VST Company Limited at Hyderabad. It is further stated that the salaries of the members of the petitioner-Union are paid through the Contractor and the same is also counter-signed by the nominee of the principal employer as required under the Factories Act.

6. It is further stated that the respondent-Company has provided building along with furniture, utensils, gas, electricity, water supply and other cutlery. The contractor is only instrumental in preparing the food and serving it to the employees. The rates of such items are also prescribed by the management. It is, in this background, stated that the contractor has no role to play and it is only the respondent-company which runs the canteen in fulfilment of the requirement contemplated u/s 46 of the Factories Act. It is, therefore, contended that the first respondent shall treat the members of the petitioner-Union as employees of the first respondent-Company and pay them regular salaries and other benefits as are-given to the other regular employees.

7. On behalf of the first respondent, a detailed counter has been filed, inter alia, contending that the requirement contemplated u/s 46 of the Factories Act is only

to provide a canteen. There is no further requirement for managing the Canteen as contended by the Writ Petitioner. The first respondent also disown the claim of the members of the petitioner-Union that they have to be treated as employees of the first respondent. The company has categorically come out that the Canteen Workers are not the employees of the management as they are only appointed by the Contractor. The respondent-company deny the existence of any nexus with the employees working in the Canteen. It is further stated in the counter that the management of the canteen is entrusted to the Blue Star Enterprises and the salaries are also paid by the Blue Star Enterprises as they are engaged by the said Blue Star Enterprises and as such the respondent-Company cannot be held to be employer for the members of the petitioner-Union. It is also denied that the first respondent-Company has anything to do with I.T.C. Limited.

8. Apart from the main relief of treating the members of the petitioner-Union as employees of the first respondent-Company, the petitioner has also sought a direction to participate in the elections which were proposed to be held at the time of filing of the writ petition. However, in the interlocutory application, the relief of participation in the elections was denied to the petitioner-Union as by that time it was made known to the Court that elections were already completed.

9. I have heard both the learned counsel at considerable length.

10. The main grievance of Sri Subrahmanyam, counsel appearing for the petitioner-Union is that the members of the petitioner-Union are all engaged in the canteen established and managed by the first respondent-Company and as such they are to be necessarily treated as employees of the first respondent and are entitled to seek regularisation and payment of salaries on par with the other regular employees. It is contended by Sri Subrahmanyam, as required u/s 46 of the Factories Act, the management has to provide a canteen and maintain it for the benefit of the workers wherever the strength of the workers exceeds 250. It is stated that the first respondent-Company employs more than 2000 workers and therefore, the management has provided a canteen in fulfilment of a requirement contemplated u/s 46 of the Factories Act. Though the management of the canteen has been with the respondent-Company right from the time of its establishment, it is only from 1982 onwards, the respondent-Company entrusted the running of the Canteen to private Contractors on certain terms and conditions. All the Food items are provided at subsidised rates. Proper quantity and quality is also maintained. There is no change in the staff working in the canteen. The Contractor has not removed the existing workers. The entire system is continued as it is except change in the Contractor. The wages of the canteen-workers are paid through the contractor by the management. Some of the canteen workers in other units established by the respondent-Company have been accommodated in regular vacancies. However, the members of the petitioner-Union at Hyderabad unit have not been treated as regular employees of the respondent-Company and are not given other benefits which the other

regular employees are getting. Entrustment of the management of the canteen to Contractor is only an internal arrangement between the first respondent-Company and the contractor and as such, the contractor has nothing to do with the workers who are in the canteen service.

11. On the contrary, it is the case of Sri K. Srinivasa Murthy, counsel appearing for the first respondent-Company that the writ petition itself is not maintainable as the respondent-Company is a management and no writ petition lies against it under Article 226 of the Constitution of India. This apart, it is contended that the canteen workers are appointed by the contractor and as such there is no nexus between the canteen workers and the regular employees appointed by the first respondent-Company. In this background, it is contended that the employees of the canteen cannot be equated as regular employees of the management and the relief sought in this Writ Petition cannot be granted. It is further contended by establishing a canteen by the management, the requirement contemplated u/s 46 of the Factories Act is fulfilled. There is no obligation to maintain the canteen by the respondent-Company. It is denied that the respondent-Company has to do anything with the V.S.T. Units.

12. The learned counsel for the petitioner-Union, in support of his contentions, has cited the following decisions in R.K. Panda v. Steel Authority of India (1997IIILLJ1207) . Andhra Pradesh Dairy Development Co-operative Federation Ltd. Vs. Shivadas Pillay and Others, , The Saraspur Mills Co. Ltd. Vs. Ramanlal Chimanlal and Others, . Ramanadham v. I.D.P. L. Hyderabad 1983 (2) ALT49, Indian Explosives Limited v. State of U. P. (1981ILLJ423), M.M.R. Khan v. Union of India (1995IIILLJ166).

13. Sri K. Srinivasa Murthy, learned counsel for the respondent-Company has also placed reliance on the following decisions in support of his contentions viz., in Konaseema Co-operative Central Bank Ltd. v. N. Seetharama Raju AIR 1990 A.P 171, B.H.E.L. Workers Association, Hardwar and Others Vs. Union of India and Others, and in Kanpur Suraksha Karamchari Union (Regd.) Vs. Union of India (UOI) and Others, .

14. On the basis of the above contentions, two questions emerge for consideration before this Court, viz.

(1) Whether the writ petition is maintainable against the first respondent-Company and if so

(2) Whether a mandamus could be issued directing the respondent-Company to treat the members of the petitioner-Union as its employees and tender all monetary benefits which are extended to the other regular employees under the respondent-Company?

15. As far as the preliminary objection as to the maintainability of the writ petition against the private management is concerned, this issue need not detain this Court any more in view of the dictum laid down by this Court in T. Gattaiah

v. Commissioner of Labour (1981IILLJ-54). In this case, establishment of a canteen and its maintenance is a statutory requirement provided u/s 46 of Chapter V of the Factories Act, 1948. Under the said Chapter V of the Factories Act, 1948, a public duty is imposed on the respondent-Company to establish and maintain the canteen. Since the members of the petitioner-Union are working in the canteen without they being treated as regular employees of the respondent-Company, they are seeking a mandamus directing the first respondent-company to discharge a public duty imposed on it by the statute to treat them as its regular employees. I am therefore, of the view, that when a public duty called upon to be discharged by a private management, a writ of mandamus under Article 226 of the Constitution of India could be issued even against a private management. In view of the said decision, the preliminary objection raised by Sri. K. Srinivasa Murthy, counsel for the respondent-Company is rejected. Therefore, I hold that the writ petition is maintainable against the first respondent-Company.

16. Coming to the crucial question as to whether the workers engaged in the canteen established u/s 46 of the Factories Act and maintained by the respondent are to be treated as employees of the respondent-Company, this aspect has been elaborately considered by the Supreme Court in *Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others*, . The Supreme Court while considering the contentions of the canteen workers in the Life Insurance Corporation Office, examined various decisions in this regard with special reference to the implication of Sections 46 and 47 of the Factories Act, 1948 and formulated few issues to examine the claims as to whether canteen workers employed in a Company, which establishes and manages the said canteen as provided u/s 46 of the Factories Act could be treated as employees of the management/company and whether they are entitled to seek regular pay on par with the regular employees of the Company.

17. The Supreme Court in the said case cited supra, formulated the following issues :

i. Where, as under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management.

ii. Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the canteen becomes a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment.

iii. The obligation to provide canteen may be explicit or implicit. Where the

obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award etc. it may be inferred from the circumstances, that the provision of the canteen may be held to have become a part of the service conditions of the employees. Whether the provision for canteen services has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.

Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management.

iv. Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among others, on the nature of the service facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc."

18. The Supreme Court while keeping the above principles in view, examined the facts on hand and held that the employees working in the canteen of the Life Insurance Corporation Office are employees of Life Insurance Corporation and directed the Life Insurance Corporation to absorb them as regular employees and directed fixation of minimum wages.

19. Applying the test laid down by the Supreme Court in the above case, it is, now to be examined, whether the members of the petitioner-Union fulfil the criterion as laid down by the Supreme Court in the above case.

20. It is not disputed that u/s 46 of the Factories Act it is a statutory requirement, that every management where more than 250 employees are working, has to necessarily 1 establish and manage a canteen. Admittedly, in this case, the respondent-Company has engaged more than 2000 employees in the cigarette manufacturing process. The requirement u/s 46 of the Factories Act is applicable to the respondent-Company which mandates establishing and managing the canteen. It is evident from the pleadings that the management has provided a canteen within the premises of the factory and was maintaining the same upto the year 1982. It is only from 1982 onwards, the management of the canteen has been entrusted to a private contractor. The reasons set forth in the counter are that the canteen was run by the respondent-Company on its own by its own workers upto 1982. But, during that period, only snacks and tea were supplied. When supply of food was introduced with effect from June 1, 1982, the

respondent felt that preparation of food items is a skilled job of specialisation which a regular worker would not do and hence, preparation and supply of food and other items was entrusted to a specialist so that not only better quality of food stuffs is supplied to the workers but also maintain industrial peace in the company. Establishing and maintaining the canteen is a statutory requirement. By such establishment, the workers are provided with regulated quantity of food items at cheaper rates. Whether the management of the canteen is with the principal I employer or with the contractor, it does not matter as long as items are supplied at subsidised rates. The agreement is directly between the management and the contractor. No worker of the company or the union representing workers are party to the agreement. The Company reimburses the difference of costs between supply and production. The management also provides for running such a canteen, premises, furniture, electricity, water etc. for the Contractor.

21. The submission of Sri K. Srinivasa Murthy that the respondent-Company by providing a canteen has fulfilled the requirement contemplated u/s 46 of the Factories Act and there is no further obligation on the management to manage the canteen, cannot be accepted by this Court in view of the fact that providing facilities to the workers is an implicit obligation provided under the statute. Providing canteen, rest-house and recreation facilities to the workers are well recognised norms in the legislative enactment concerning the welfare of the workers employed in industrial establishments. Whether the canteen being run by the management or by any private contractor has no significance as long as the requirement of providing and managing the canteen remain in the statute. This aspect has been made clear by the Supreme Court in the *Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others*, cited supra.

22. The specific case of the members of the petitioner-Union is that they have been continued as canteen workers irrespective of the change in the contractors from time to time. Their wages are paid by the management through the contractors. The respondent-Company has not placed any record to show that the wages to the members of the petitioner-Union are paid only by the contractor. The respondent-management has also not placed anything before this Court to show that they are not releasing any subsidy to the contractor for supplying the food items to the workers engaged in factory. It is not denied that the contractor is not provided with accommodation, furniture, water supply, electricity and cutlery etc. The contractor is required to maintain certain standard in the quality and quantity of the food items supplied to the employees engaged by the first respondent-Company. The rate on each item of supply is also settled. Therefore, it goes to show that the contractor is only an agent acting under the instructions and on an understanding arrived at between the company and the contractor.

23. It is common knowledge that no contractor will supply the items at subsidised rates and incur loss unless he is compensated through agreed terms.

The contractor is compensated by the Company on reimbursing the difference in rates by way of subsidy. Therefore, in reality, it is the management which is running the canteen through the contractor, in fulfilment of the statutory requirement provided u/s 46 of the Factories Act. It has been categorically stated by the members of the petitioner-Union that despite change in Contractors, the members of the petitioner-Union are continued to work in the canteen. It has further been stated that in the five other units under the same management employees working in the canteen have been accommodated suitably in permanent vacancies by the management. In the counter filed by the first respondent at page-5, it is stated that "even if the allegation that canteen in five other manufacturing units of I.T.C. Company being run by regular staff, it has no relevance for the disposal of the present writ petition." This attempt seems to be to disown that first respondent-Company has nothing to do with I.T.C. I do (not sic.) think, this stand, in any way makes any difference while considering the question as to whether the members of the petitioner-Union are entitled to be treated as the employees of the company. When the contractor discharges his functions as per the agreed terms with the management, it cannot be said that contractor is an independent person and is employing his own workers in the canteen. Nothing is placed before this Court to justify the stand of the respondent in this direction. Therefore, it is hard to accept the submissions made on behalf of the management that the workers in the canteen are directly appointed by the contractor and their salaries are paid by the contractor alone. It is well known fact that in all these factories, food items in canteen are supplied on subsidised rates. The management would compensate the difference of amount by way of subsidy to the contractor. Unless, this nexus is denied by the respondent, it would be impossible to say that the employer has no say in the management of the canteen. I therefore, hold that the members of the petitioner-Union working in the canteen established by the first respondent-Company are the employees of the first respondent-Company only.

24. The petitioner-Union has sought for a mandamus to direct the respondent-management to treat the canteen employees as its regular employees and extend all benefits to them on par with its other regular employees. But these canteen workers are classified as cleaners, cooks, managers, servers etc. There is no difficulty in directing the respondent-Company to treat the members of the petitioner-Union as employees of the respondent-Company. However, difficulty would arise while directing payment of salaries to these canteen employees on par with other employees unless the categorisation is completed. There are different categories of canteen workers such as General 1 Manager, Canteen Manager-cum-Salesman, Kitchen clerk, Canteen clerk, cook, bearer, water boy, sweeper etc. It is therefore, not possible for this Court to evaluate the work done by each of the categories. Hence, different service conditions will have to be prescribed for different categories. The canteen employees do get free tea, free food and other facilities and their hours of service are different. Therefore, taking all these aspects into consideration, the respondent-Company shall prescribe

different service conditions to these canteen workers. While prescribing different categories and fixing wages for these different categories, the first respondent, if necessary, takes the assistance of the wage fixing Authority under the relevant Act. The entire exercise, in all probability, shall be completed within a period of six months from the date of receipt of a copy of this order. Once, the different categories, as indicated above, is prescribed and the pay structure is evolved, the members of the petitioner-Union who are canteen employees, are entitled for the difference of pay. However, the question is from which date the members of the petitioner-Union shall be deemed to have become the employees of the respondent-management and are entitled to the minimum salary and other benefits ? In the decision of the Supreme Court *Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others*, cited supra, it was held that the canteen employees shall be treated as employees of the Life Insurance Corporation from the date of filing of the writ petition. I am of the view, the members of the petitioner-Union could be held to be regular employees of the first respondent-Company from the date of filing of the writ petition before this Court and they shall be paid the arrears of salaries and other monetary benefits from the said date after adjusting the wages and other monetary benefits, if any, received from time to time. The years of continuous service put in by them even prior to the aforesaid dates as canteen workers shall, however, be taken into account for the purpose of calculating the retirement benefits.

25. It is further made clear that the above direction to treat the members of the petitioner-Union who are continuing as such as on today as regular employees of the respondent-Company is subject to the following conditions :

(a) that they were above the minimum and below the maximum age limit and medically fit as per the regulations of the respondent-Company as on the date of filing of the writ petition; and

(b) that on the date of filing of the writ petition before this Court, they had put in a minimum of three years continuous service as canteen workers in the canteen in question. For the purposes of calculating the said three years qualifying service and the retiral benefits, the service prior to the attainment of the minimum qualifying age under the respondent-Company shall be ignored.

26. The petitioner-Union has also sought a direction to permit them to participate in the election process. Since I have held that the members of the petitioner-Union are to be treated as employees of the respondent-management, and when once they are treated as employees of the respondent-management, they are entitled to other incidental benefits on par with other regular employees.

27. Though both the learned Counsel cited series of decisions in support of their rival contentions, in view of the Supreme Court decision *Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others*, cited supra, I do not think it necessary to refer to all these decisions individually as the said decision of the Supreme Court covers the entire field of controversy raised in this writ

petition.

28. Having regard to the above discussion, the writ petition is allowed in the above terms. No costs.